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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

NO. 291

C. S. HELMIG, Petitioner,

v.

ROCKWELL MANUFACTURING COMPANY, a corporation, and BETHLEHEM STEEL COMPANY, a Corporation, Respondents.

BRIEF OF ROCKWELL MANUFACTURING COMPANY, RESPONDENT, IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

ROCKWELL MANUFACTURING COMPANY,
Respondent
By A. W. HENDERSON
J. WRAY CONNOLLY
W. S. MOORHEAD, JR.
W. F. SWANSON, JR.
MOORHEAD & KNOX

1732 Oliver Building
Pittsburgh 22, Pennsylvania

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STATEMENT

C. S. Helmig, Petitioner, has asked your Honorable Court to grant a Writ of Certiorari with respect to a decision of the Supreme Court of Pennsylvania, holding that Petitioner was not entitled to recover broker's commissions from Rockwell Manufacturing Company and that neither Rockwell Manufacturing Company nor Bethlehem Steel Company were guilty of a conspiracy to deprive Petitioner of such commissions.

The litigation has been protracted. In the first stage of litigation, which was commenced in the fall of 1949 and was a suit in assumpsit against Rockwell Manufacturing Company, the Court of Common Pleas of Allegheny County, Pennsylvania, entered judgment non obstante veredicto for the Defendant Rockwell Manufacturing Company. The Supreme Court of Pennsyl-

vania in a unanimous decision affirmed the Court below. (No. 181, March Term 1954 and reported at 380 Pa. 305, 111 A. 2d 118 and which is reprinted in the Appendix of the Petition for Writ of Certiorari at page 14.)

No Federal question was raised in this proceeding (Petition for Writ of Certiorari, page 5).

Subsequently, the Supreme Court of Pennsylvania denied four successive petitions for reargument and reconsideration. The question of due process was not raised until the filing of the first of these petitions.

In the second stage of the litigation Petitioner filed an action charging conspiracy against Rockwell Manufacturing Company and Bethlehem Steel Company and also filed a Petition for New Trial in the original action. Judgment was granted on the pleadings in the charge of the conspiracy and Petition for New Trial in the original action was denied by the lower Court.

On appeal, the Supreme Court of Pennsylvania affirmed the lower Court with respect to judgment on the pleadings and denial of the Petition for New Trial at Nos. 6 and 7, March Term 1957, reported at 389 Pa. 21, 131 A 2d. 622 (Adv. Rep.)

A Petition for Reargument in the later cases was denied by the Supreme Court of Pennsylvania.

ARGUMENT

I. **Petitioner has failed to show sufficient reasons for allowance of Writ of Certiorari because no Federal question was involved.**

In its initial stages the case at bar was an ordinary contract action seeking to recover broker's commissions. In the second phase of the litigation Petitioner alleged a conspiracy to deprive him of the same commissions.

Obviously, no Federal question was involved.

Rule 19 of the Revised Rules of the United States Supreme Court sets forth the reasons for the granting of a Certiorari by the Court.

In order to invoke the discretionary exercise of the power to grant Certiorari with respect to a final judgment of the highest appellate court of a state, it must be shown that—

(a) The State Court has decided a Federal question of substance not theretofore determined by the Supreme Court of the United States; or that

(b) The State Court has decided a Federal question of substance in a way which is probably not in accord with the applicable decisions of the Supreme Court of the United States.

Clearly a Writ of Certiorari should not be granted in the instant case.

II. **Even if a Federal Question had been involved, it was not properly raised.**

Petitioner has alluded to the Fourteenth Amendment to the Constitution of the United States and argues that he was deprived of his rights thereunder. Rockwell Manufacturing Company respectfully submits that there was no Federal question involved and further that even if such a question had existed, it was not properly raised in view of the fact that it is first referred to in a Petition for Reargument before the Supreme Court of Pennsylvania.

As was stated in the case of *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 89 L. Ed. 2092 (1944):

> "* * * Questions first presented to the highest state court on a petition for rehearing come too late for consideration * * *"

In this case the Supreme Court of Pennsylvania did not entertain a Federal question and did not decide one, there being no such question before it except as referred to in the Petition for Reargument which was denied without opinion.

CONCLUSION

Respondent, Rockwell Manufacturing Company, respectfully submits that the Petition for Writ of Certiorari to the Supreme Court of Pennsylvania presents no sound reason why this Court should grant the Writ of Certiorari, there being no Federal question involved and none having been raised before the Supreme Court of Pennsylvania, except on Petition for Reargument.

Respectfully submitted,

ROCKWELL MANUFACTURING COMPANY,
Respondent

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